

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 550**

5 (SENATORS KLEMPA, KESSLER (ACTING PRESIDENT), WILLS, SNYDER, YOST, MILLER,
6 EDGELL AND D. FACEMIRE, *original sponsors*)

7 _____
8 [Passed March 12, 2011; to take effect July 1, 2011.]
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11
12 AN ACT to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new section, designated §19-23-12d; to amend
14 and reenact §29-22A-6, §29-22A-10 and §29-22A-10c of said
15 code; and to amend and reenact §29-25-19 and §29-25-22 of said
16 code, all relating generally to gaming at licensed racetracks
17 and historic resort hotels; allowing simulcast pari-mutuel
18 racing and wagering at certain historic resort hotels;
19 defining terms; permitting the issuing of licenses; providing
20 for payments; setting forth conditions for out-of-state tracks
21 and interstate pools; registering of persons conducting
22 wagering activities; setting forth the licensee's retainage;
23 setting forth the amounts of payments made by a licensee and
24 to whom they are to be paid; making reference to certain
25 federal law; authorizing rulemaking; exempting certain pari-
26 mutuel wagering and equipment, services and supplies from
27 state sales and service taxes; permitting licensees at
28 racetracks and historic resort hotels to establish minimum and

1 maximum wager limits at video lottery terminals; authorizing
2 the use of video lottery terminal bill acceptors for all
3 United States currency; directing up to \$10 million each year
4 until June 30, 2020, from racetrack video lottery gross
5 terminal income into a new racetrack modernization fund to be
6 used to subsidize racetrack purchases of new video lottery
7 terminals and related equipment; reducing the required life
8 for capital investments by licensees at racetracks to be
9 reimbursed from the Capital Investment Fund; extending the
10 time for recoupment of expenditures for capital improvements;
11 and directing that two and one-half percent of the gross
12 terminal income of certain historic resort hotels be deposited
13 into a new historic resort hotel modernization fund to be used
14 to subsidize certain historic resort hotel purchases.

15 *Be it enacted by the Legislature of West Virginia:*

16 That the Code of West Virginia, 1931, as amended, be amended
17 by adding thereto a new section, designated §19-23-12d; that
18 §29-22A-6, §29-22A-10 and §29-22A-10c of said code be amended and
19 reenacted; and that §29-25-19 and §29-25-22 of said code be amended
20 and reenacted, all to read as follows:

21 **CHAPTER 19. AGRICULTURE.**

22 **ARTICLE 23. HORSE AND DOG RACING.**

23 **§19-23-12d. Simulcast races and pari-mutuel wagering at authorized**
24 **gaming facility in historic resort hotel.**

25 (a) *Definitions.* -- In addition to the words and phrases
26 defined in section three of this article, the words and phrases
27 defined in subsection (b) of this section have the meanings

1 provided in that subsection when used in this section, unless the
2 context in which the term or phrase is used clearly indicates that
3 a different meaning is intended.

4 (b) *Defined words and phrases.* --

5 (1) "Applicant" means any gaming licensee who is licensed
6 under article twenty-five, chapter twenty-nine of this code,
7 applying for a license under this section to conduct pari-mutuel
8 wagering on televised horse and dog races.

9 (2) "Designated pari-mutuel wagering area" means one or more
10 specific areas of an existing historic resort hotel within which
11 the Racing Commission has authorized the gaming licensee to offer
12 pari-mutuel wagering to patrons of the hotel.

13 (3) "Gaming facility" means a designated area on the premises
14 of an existing historic resort hotel in which pari-mutuel wagering
15 is conducted by a gaming licensee.

16 (4) "Gaming licensee" means the licensed operator of a gaming
17 facility under article twenty-five, chapter twenty-nine of this
18 code, who is also licensed under this article to offer pari-mutuel
19 wagering on simulcast horse or dog races or on both types of races.

20 (5) "Historic resort hotel" means a historic resort hotel as
21 defined in section two, article twenty-five, chapter twenty-nine of
22 this code.

23 (6) "In-state host track" means a racetrack within this state
24 licensed to conduct horse or dog race meetings at which pari-mutuel
25 wagering is conducted and which is an in-state sending track.

26 (7) "In-state sending track" means a racetrack in this state
27 licensed under this article to conduct horse or dog race meetings
28 at which pari-mutuel wagering is conducted and which is equipped to

1 conduct simulcasting of those races and intertrack pari-mutuel
2 wagering on those races.

3 (8) "In-state track" means an in-state host track or an
4 in-state sending track.

5 (9) "Interstate common pool" means a pari-mutuel pool
6 established within this state or in another state or foreign nation
7 within which is combined comparable pari-mutuel pools of one or
8 more receiving legal wagering entities located in one or more
9 states or foreign nations upon a race at a sending track located
10 within or outside of this state for the purpose of establishing
11 payoff prices in the various jurisdictions.

12 (10) "Intertrack wagering" means parimutuel wagering on
13 simulcast horse or dog races held at an in-state sending track by
14 patrons at a gaming facility licensed under this section and the
15 electronic transmission of the wagers to the in-state sending
16 track.

17 (11) "License" means a license issued by the Racing Commission
18 pursuant to this section, including:

19 (A) A license to operate a gaming facility in which
20 pari-mutuel wagering on simulcast races will be available to
21 patrons;

22 (B) A license to be employed in connection with the operation
23 of a gaming facility at which pari-mutuel wagering is offered on
24 simulcast races; or

25 (C) A license to provide management services under a contract
26 to a gaming facility licensed under this article.

27 (12) "Licensed gaming facility employee" means any individual
28 licensed or registered to be employed by a gaming licensee in

1 connection with the operation of a pari-mutuel wagering pursuant to
2 this section.

3 (13) "Out-of-state host track" means a racetrack in a
4 jurisdiction other than this state, the operator of which is
5 lawfully permitted to conduct a horse or dog race meeting and which
6 conducts horse or dog races upon which pari-mutuel wagers may be
7 placed.

8 (14) "Out-of-state track" means an out-of-state host track or
9 an out-of-State sending track.

10 (15) "Out-of-state sending track" means a racetrack in a
11 jurisdiction other than the State of West Virginia which is
12 lawfully permitted to conduct a horse or dog race meeting and to
13 provide simulcast horse or dog races to a racetrack in this state.

14 (16) "Participation agreement" means the written contract that
15 provides for the establishment or implementation of simulcasting of
16 horse or dog races and pari-mutuel wagering. Each contract shall
17 set forth the manner in which the pari-mutuel wagering system shall
18 be managed, operated and capitalized, as well as how expenses and
19 revenues shall be allocated and distributed by and among the
20 licensed gaming facility under this section and the other eligible
21 participants in the contract.

22 (17) "Premises of an existing historic resort hotel" means the
23 historic resort hotel, attachments of the historic resort hotel,
24 and the traditional, immediate grounds of the historic resort
25 hotel.

26 (18) "Receiving gaming facility" means a licensed racetrack or
27 authorized gaming facility within this state licensed under this
28 article which is equipped to receive simulcast horse and dog races

1 and to conduct intertrack or interstate wagering on those races.

2 (19) "Simulcast horse or dog races" means horse or dog races
3 conducted at an in-state sending track or an out-of-state sending
4 track, as the case may be, and transmitted simultaneously by
5 picture to the authorized gaming facility licensed under this
6 section or other legal wagering facility.

7 (20) "Simulcasting" means the simultaneous audio or visual
8 transmission of horse or dog races conducted at in-state and
9 out-of-state racetracks to the gaming facility licensee under this
10 section and pari-mutuel wagering on the results of those races.

11 (c) *Application for license.* -- An applicant who is licensed
12 under article twenty-five, chapter twenty-nine of this code may
13 apply to the West Virginia Racing Commission for a license to
14 conduct at the historic resort hotel pari-mutuel wagering on
15 simulcast horse and dog races held at a licensed racetrack in this
16 state, or in another jurisdiction, where pari-mutuel wagering is
17 permitted and conducted. The application shall be submitted in the
18 form prescribed by the commission and provide the information
19 required by the commission.

20 (d) *Issuance of license.* -- Within sixty days after an
21 application is filed pursuant to subsection (b) of this section,
22 the Racing Commission shall act on the application and either grant
23 or deny the application: *Provided,* That issuance of the license
24 shall not be unreasonably withheld. Once issued, the license shall
25 expire, be renewed, revoked or suspended on the same basis as
26 licenses issued under this article to racetracks to hold live
27 racing and conduct pari-mutuel wagering.

28 (e) *Transmission of races from in-state sending tracks.* -- An

1 in-state sending track may transmit to a gaming licensee under this
2 section all or some of the live races conducted at the racetrack.

3 (f) *Receipt of simulcasts transmitted from out-of-state*
4 *tracks.* -- The gaming licensee under this section may, in
5 accordance with this article, and any applicable rules of the
6 Racing Commission and with the approval of the commission, receive
7 at the facility simulcast horse or dog races, or both, conducted at
8 out-of-state sending tracks.

9 (g) *Payments to sending track.* - The authorized gaming
10 facility receiving a simulcast horse or dog race from an
11 out-of-state sending track shall pay to the out-of-state sending
12 track for the transmission such amount, if any, as may be agreed
13 upon by the authorized gaming facility and the out-of-state sending
14 track. The authorized gaming facility accepting pari-mutuel wagers
15 on a horse or dog race conducted at an out-of-state host track
16 shall pay to the out-of-state host track such amount, if any, as
17 provided for in the agreement, if any, between the authorized
18 gaming facility and the out-of-state host track.

19 (h) *Conditions for participation by out-of-state tracks;*
20 *interstate common pools.* --

21 (1) Except as provided in subdivision (2) of this subsection,
22 the Racing Commission shall not permit an out-of-state sending
23 track or an out-of-state host track to participate in simulcast
24 pari-mutuel wagering or qualify as an out-of-state host track,
25 respectively, unless the pari-mutuel pools respecting the
26 authorized gaming facility under this article are combined with
27 comparable pari-mutuel pools at the out-of-state track. The types
28 of wagering, takeout, distribution of winnings, rules of racing,

1 method of calculating breakage, and the percentage of deposits
2 remaining undistributed from a pari-mutuel pool after payment is
3 made to winning ticket holders shall be determined in accordance
4 with the law or policy applicable to the out-of-state track.

5 (2) With the prior approval of the Racing Commission and the
6 concurrence of the out-of-state track, an authorized gaming
7 facility under this article and receiving tracks or entities in
8 other states other than the state in which the out-of-state track
9 is located may form an interstate common pool. With respect to
10 such interstate common pools, the Racing Commission may approve
11 types of wagering, takeout, distribution of winnings, rules of
12 racing, method of calculating breakage, and a percentage of
13 deposits remaining undistributed from a parimutuel pool after
14 payment is made to winning ticket holders which are different from
15 those which would otherwise be applied in this state but which are
16 consistent for all parties to the interstate common pool.

17 (i) *Licensing or registration of persons conducting*
18 *wagering-related activities.* -- All persons engaged in conducting
19 wagering-related activities at the authorized gaming facility
20 licensed under this section, whether employed directly by the
21 licensee or by a person or entity conducting or operating the
22 simulcast racing and pari-mutuel wagering facility under an
23 agreement with the licensee, shall be licensed or registered in
24 accordance with such rules as may be promulgated by the Racing
25 Commission. All other employees at the simulcast racing and
26 pari-mutuel wagering facility shall be licensed or registered in
27 accordance with regulations of the Racing Commission: *Provided,*
28 That when the employee is licensed by the Lottery Commission, that

1 employee must register with the Racing Commission is not required
2 to have a separate license issued by the Racing Commission. The
3 Racing Commission shall has the authority to promulgate rules,
4 regulations and conditions under which all such licenses are
5 issued, or registrations made, in this state and to revoke or
6 refuse to issue a license, or revoke or refuse to accept a
7 registration, if in the opinion of the commission the revocation or
8 refusal is in the public interest: *Provided*, That the rules,
9 regulations and conditions are uniform in their application to both
10 the gaming facility licensed under this section and racetracks
11 licensed under this article to hold race meetings at which
12 pari-mutuel wagering is conducted. The fees under this subsection
13 may not be in excess of the fee charge for a similar occupational
14 permit or license at a licensed racetrack.

15 (j) *Retainage of gaming licensee.* -- The gaming licensee
16 under this section shall retain from pari-mutuel wagers a basic
17 commission of seventeen and twenty-five one-hundredths percent on
18 horse races and a basic commission of sixteen and twenty-five
19 one-hundredths percent on dog races. Breakage shall be calculated
20 and distributed in the manner provided in subsection (c), section
21 nine of this article.

22 (k) *Payments by the licensee.* -- Out of the commission
23 retained or deducted by a gaming licensee under the provisions of
24 subsection (j) of this section, the gaming licensee shall pay:

25 (1) One-tenth of one percent into the General Revenue Fund of
26 county commission of the county in which the historic resort hotel
27 is located;

28 (2) Each day, the daily pari-mutuel pools tax calculated under

1 section ten of this article; and

2 (3) The amount required to be paid under the terms of a
3 contract with a host licensed racing association in this state or
4 in another jurisdiction that permits pari-mutual wagering on horse
5 or dog races held or conducted in that jurisdiction.

6 (1) After making the payments required by subsection (k) of
7 this section, the remaining balance may be retained by the gaming
8 licensee under this section.

9 (m) *Compliance with federal law.* -- The federal Interstate
10 Horseracing Act of 1978, P. L. 95-515, 15 U.S.C. §§3001-3007, is
11 instructive as the legislative intent of this section.

12 (n) *Promulgation of rules.* -- The Racing Commission shall
13 promulgate rules in accordance with article three, chapter
14 twenty-nine-a of this code, it deems necessary to implement and
15 efficiently administer this section: *Provided*, That the rules are
16 to be consistent with the rules promulgated for pari-mutuel
17 wagering on televised races at the racetracks.

18 (o) *Pari-mutuel wagers and equipment exempt from sales tax.*
19 -- Notwithstanding any provision of this code to the contrary, the
20 license tax imposed in section ten of this article shall be in lieu
21 of payment of the tax imposed by article fifteen, chapter eleven of
22 this code, on pari-mutuel wagering and on the purchase of
23 equipment, services and supplies directly used in pari-mutual
24 wagering under this section.

25 **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

26 **ARTICLE 22A. RACETRACK VIDEO LOTTERY.**

27 **§29-22A-6. Video lottery terminal hardware and software**
28 **requirements; hardware specifications; software**

1 **requirements for randomness testing; software**
2 **requirements for percentage payout; software**
3 **requirements for continuation of video lottery game**
4 **after malfunction; software requirements for play**
5 **transaction records.**

6 (a) The commission may approve video lottery terminals and in
7 doing so shall take into account advancements in computer
8 technology, competition from nearby states and the preservation of
9 jobs in the West Virginia pari-mutuel racing industry. In
10 approving video lottery terminals licensed for placement in this
11 state, the commission shall ensure that the terminals meet the
12 following hardware specifications:

13 (1) Electrical and mechanical parts and design principles may
14 not subject a player to physical hazards or injury.

15 (2) A surge protector shall be installed on the electrical
16 power supply line to each video lottery terminal. A battery or
17 equivalent power back-up for the electronic meters shall be capable
18 of maintaining accuracy of all accounting records and terminal
19 status reports for a period of one hundred eighty days after power
20 is disconnected from the terminal. The power back-up device shall
21 be located within the locked logic board compartment of the video
22 lottery terminal.

23 (3) An on/off switch which controls the electrical current
24 used in the operation of the terminal shall be located in an
25 accessible place within the interior of the video lottery terminal.

26 (4) The operation of each video lottery terminal may not be
27 adversely affected by any static discharge or other electromagnetic
28 interference.

1 (5) A minimum of one electronic or mechanical coin acceptor or
2 other means accurately and efficiently to establish credits shall
3 be installed on each video lottery terminal. Each video lottery
4 terminal may also contain bill acceptors for any legal United
5 States currency. All coin and bill acceptors shall be approved by
6 the commission prior to use on any video lottery terminal in this
7 state.

8 (6) Access to the interior of a video lottery terminal shall
9 be controlled through a series of locks and seals.

10 (7) The main logic boards and all erasable programmable
11 read-only memory chips (EPROMS) are considered to be owned by the
12 commission and shall be located in a separate locked and sealed
13 area within the video lottery terminal.

14 (8) The cash compartment shall be located in a separate locked
15 area within or attached to the video lottery terminal.

16 (9) No hardware switches, jumpers, wire posts or any other
17 means of manipulation may be installed which alter the pay tables
18 or payout percentages in the operation of a game. Hardware
19 switches on a video lottery terminal to control the terminal's
20 graphic routines, speed of play, sound and other purely cosmetic
21 features may be approved by the commission.

22 (10) Each video lottery terminal shall contain a single
23 printing mechanism capable of printing an original ticket and
24 retaining an exact legible copy within the video lottery terminal
25 or other means of capturing and retaining an electronic copy of the
26 ticket data as approved by the commission: *Provided*, That such
27 printing mechanism is optional on any video lottery terminal which
28 is designed and equipped exclusively for coin or token payouts.

1 The following information shall be recorded on the ticket when
2 credits accrued on a video lottery terminal are redeemed for cash:

- 3 (i) The number of credits accrued;
- 4 (ii) Value of the credits in dollars and cents displayed in
5 both numeric and written form;
- 6 (iii) Time of day and date;
- 7 (iv) Validation number; and
- 8 (v) Any other information required by the commission.

9 (11) A permanently installed and affixed identification plate
10 shall appear on the exterior of each video lottery terminal and the
11 following information shall be on the plate:

- 12 (i) Manufacturer of the video lottery terminal;
- 13 (ii) Serial number of the terminal; and
- 14 (iii) Model number of the terminal.

15 (12) The rules of play for each game shall be displayed on the
16 video lottery terminal face or screen. The commission may reject
17 any rules of play which are incomplete, confusing, misleading or
18 inconsistent with game rules approved by the commission. For each
19 video lottery game there shall be a display detailing the credits
20 awarded for the occurrence of each possible winning combination of
21 numbers or symbols. A video lottery terminal may allow the amounts
22 of minimum and maximum wagers on a single game to be determined by
23 licensee or permit holder in the exercise of its business judgment
24 subject to the approval of the commission. All information
25 required by this subdivision shall be displayed under glass or
26 another transparent substance. No stickers or other removable
27 devices shall be placed on the video lottery terminal screen or
28 face without the prior approval of the commission.

1 (13) Communication equipment and devices shall be installed to
2 enable each video lottery terminal to communicate with the
3 commission's central computer system by use of a communications
4 protocol provided by the commission to each permitted manufacturer,
5 which protocol shall include information retrieval and terminal
6 activation and disable programs, and the commission may require
7 each licensed racetrack to pay the cost of a central site computer
8 as a part of the licensing requirement.

9 (14) All video lottery terminals shall have a security system
10 which temporarily disables the gaming function of the terminal
11 while opened.

12 (b) Each video lottery terminal shall have a random number
13 generator to determine randomly the occurrence of each specific
14 symbol or number used in video lottery games. A selection process
15 is random if it meets the following statistical criteria:

16 (1) *Chi-square test.* -- Each symbol or number shall satisfy
17 the ninety-nine percent confidence level using the standard
18 chi-square statistical analysis of the difference between the
19 expected result and the observed result.

20 (2) *Runs test.* -- Each symbol or number may not produce a
21 significant statistic with regard to producing patterns of
22 occurrences. Each symbol or number is random if it meets the
23 ninety-nine percent confidence level with regard to the runs test
24 for the existence of recurring patterns within a set of data.

25 (3) *Correlation test.* -- Each pair of symbols or numbers is
26 random if it meets the ninety-nine percent confidence level using
27 standard correlation analysis to determine whether each symbol or
28 number is independently chosen without regard to another symbol or

1 number within a single game play.

2 (4) *Serial correlation test.* -- Each symbol or number is
3 random if it meets the ninety-nine percent confidence level using
4 standard serial correlation analysis to determine whether each
5 symbol or number is independently chosen without reference to the
6 same symbol or number in a previous game.

7 (c) Each video lottery terminal shall meet the following
8 maximum and minimum theoretical percentage payout during the
9 expected lifetime of the terminal:

10 (1) Video lottery games shall pay out no less than eighty
11 percent and no more than ninety-five percent of the amount wagered.
12 The theoretical payout percentage will be determined using standard
13 methods of probability theory.

14 (2) Manufacturers must file a request and receive approval
15 from the commission prior to manufacturing for placement in this
16 state video lottery terminals programmed for a payout greater than
17 ninety-two percent of the amount wagered. Commission approval
18 shall be obtained prior to applying for testing of the high payout
19 terminals.

20 (3) Each terminal shall have a probability greater than one in
21 seventeen million of obtaining the maximum payout for each play.

22 (d) Each video lottery terminal shall be capable of continuing
23 the current game with all current game features after a video
24 lottery terminal malfunction is cleared. If a video lottery
25 terminal is rendered totally inoperable during game play, the
26 current wager and all credits appearing on the video lottery
27 terminal screen prior to the malfunction shall be returned to the
28 player.

1 (e) Each video lottery terminal shall at all times maintain
2 electronic accounting regardless of whether the terminal is being
3 supplied with electrical power. Each meter shall be capable of
4 maintaining a total of no less than eight digits in length for each
5 type of data required. The electronic meters shall record the
6 following information:

7 (1) Number of coins inserted by players or the coin equivalent
8 if a bill acceptor is being used or tokens or vouchers are used;

9 (2) Number of credits wagered;

10 (3) Number of total credits, coins and tokens won;

11 (4) Number of credits paid out by a printed ticket;

12 (5) Number of coins or tokens won, if applicable;

13 (6) Number of times the logic area was accessed;

14 (7) Number of times the cash door was accessed;

15 (8) Number of credits wagered in the current game;

16 (9) Number of credits won in the last complete video lottery
17 game; and

18 (10) Number of cumulative credits representing money inserted
19 by a player and credits for video lottery games won but not
20 collected.

21 (f) No video lottery terminal may have any mechanism which
22 allows the electronic accounting meters to clear automatically.
23 Electronic accounting meters may not be cleared without the prior
24 approval of the commission. Both before and after any electronic
25 accounting meter is cleared, all meter readings shall be recorded
26 in the presence of a commission employee.

27 (g) The primary responsibility for the control and regulation
28 of any video lottery games and video lottery terminals operated

1 pursuant to this article rests with the commission.

2 (h) The commission shall, directly or through a contract with
3 a third-party vendor other than the video lottery licensee,
4 maintain a central site system of monitoring the lottery terminals
5 utilizing an on-line or dial-up inquiry. The central site system
6 shall be capable of monitoring the operation of each video lottery
7 game or video lottery terminal operating pursuant to this article
8 and, at the direction of the director, immediately disable and
9 cause not to operate any video lottery game and video lottery
10 terminal. As provided in this section, the commission may require
11 the licensed racetrack to pay the cost of a central site computer
12 as part of the licensing requirement.

13 **§29-22A-10. Accounting and reporting; commission to provide**
14 **communications protocol data; distribution of net terminal**
15 **income; remittance through electronic transfer of funds;**
16 **establishment of accounts and nonpayment penalties; commission**
17 **control of accounting for net terminal income; settlement of**
18 **accounts; manual reporting and payment may be required;**
19 **request for reports; examination of accounts and records.**

20 (a) The commission shall provide to manufacturers, or
21 applicants applying for a manufacturer's permit, the protocol
22 documentation data necessary to enable the respective
23 manufacturer's video lottery terminals to communicate with the
24 commission's central computer for transmitting auditing program
25 information and for activation and disabling of video lottery
26 terminals.

27 (b) The gross terminal income of a licensed racetrack shall be
28 remitted to the commission through the electronic transfer of

1 funds. Licensed racetracks shall furnish to the commission all
2 information and bank authorizations required to facilitate the
3 timely transfer of moneys to the commission. Licensed racetracks
4 must provide the commission thirty days' advance notice of any
5 proposed account changes in order to assure the uninterrupted
6 electronic transfer of funds. From the gross terminal income
7 remitted by the licensee to the commission:

8 (1) The commission shall deduct an amount sufficient to
9 reimburse the commission for its actual costs and expenses incurred
10 in administering racetrack video lottery at the licensed racetrack
11 and the resulting amount after the deduction is the net terminal
12 income. The amount deducted for administrative costs and expenses
13 of the commission may not exceed four percent of gross terminal
14 income: *Provided*, That any amounts deducted by the commission for
15 its actual costs and expenses that exceeds its actual costs and
16 expenses shall be deposited into the State Lottery Fund. For the
17 fiscal years ending June 30, 2011 through June 30, 2020, the term
18 "actual costs and expenses" may include transfers of \$ up to \$10
19 million in surplus allocations for each fiscal year, as calculated
20 by the commission when it has closed its books for the fiscal year,
21 to the Licensed Racetrack Modernization Fund created by
22 subdivision(2), subsection (b) of this section. For all fiscal
23 years beginning on or after July 1, 2001, the commission shall not
24 receive an amount of gross terminal income in excess of the amount
25 of gross terminal income received during the fiscal year ending on
26 June 30, 2001, but four percent of any amount of gross terminal
27 income received in excess of the amount of gross terminal income
28 received during the fiscal year ending on June 30, 2001, shall be

1 deposited into the fund established in section eighteen-a, article
2 twenty-two of this chapter; and

3 (2) A Licensed Racetrack Modernization Fund is created within
4 the lottery fund. For all fiscal years beginning on or after July
5 1, 2011, and ending with the fiscal year beginning July 1, 2020,
6 the commission shall deposit such amounts as are available
7 according to subdivision (1), subsection (b) of this section into
8 a separate facility modernization account maintained within the
9 Licensed Racetrack Modernization Fund for each racetrack. Each
10 racetrack's share of each year's deposit shall be calculated in the
11 same ratio as each racetrack's apportioned contribution to the four
12 percent administrative costs and expenses allowance provided for in
13 subdivision (1), subsection (b) of this section for that year. For
14 each two dollars expended by a licensed racetrack for facility
15 modernization improvements at the racetrack, having a useful life
16 of three or more years and placed in service after July 1, 2011,
17 the licensed racetrack shall receive \$1 in recoupment from its
18 facility modernization account. If the licensed racetrack's
19 facility modernization account contains a balance in any fiscal
20 year, the unexpended balance from that fiscal year will be
21 available for matching for one additional fiscal year, after which
22 time, the remaining unused balance carried forward shall revert to
23 the lottery fund. For purposes of this section, the term "facility
24 modernization improvements" includes acquisitions of new and unused
25 video lottery terminals and related equipment. Video lottery
26 terminals financed through the recoupment provided in this
27 subdivision must be retained by the licensee in its West Virginia
28 licensed location for a period of not less than five years from the

1 date of initial installation.

2 (c) The amount resulting after the deductions required by
3 subsection (b) of this section constitutes net terminal income that
4 shall be divided as set out in this subsection. For all fiscal
5 years beginning on or after July 1, 2001, any amount of net
6 terminal income received in excess of the amount of net terminal
7 income received during the fiscal year ending on June 30, 2001,
8 shall be divided as set out in section ten-b of this article. The
9 licensed racetrack's share is in lieu of all lottery agent
10 commissions and is considered to cover all costs and expenses
11 required to be expended by the licensed racetrack in connection
12 with video lottery operations. The division shall be made as
13 follows:

14 (1) The commission shall receive thirty percent of net
15 terminal income, which shall be paid into the State Lottery Fund as
16 provided in section ten-a of this article;

17 (2) Until July 1, 2005, fourteen percent of net terminal
18 income at a licensed racetrack shall be deposited in the special
19 fund established by the licensee, and used for payment of regular
20 purses in addition to other amounts provided for in article
21 twenty-three, chapter nineteen of this code, on and after July 1,
22 2005, the rate shall be seven percent of net terminal income;

23 (3) The county where the video lottery terminals are located
24 shall receive two percent of the net terminal income: *Provided,*
25 *That:*

26 (A) Beginning July 1, 1999, and thereafter, any amount in
27 excess of the two percent received during the fiscal year 1999 by
28 a county in which a racetrack is located that has participated in

1 the West Virginia Thoroughbred Development Fund since on or before
2 January 1, 1999 shall be divided as follows:

3 (i) The county shall receive fifty percent of the excess
4 amount; and

5 (ii) The municipalities of the county shall receive fifty
6 percent of the excess amount, said fifty percent to be divided
7 among the municipalities on a per capita basis as determined by the
8 most recent decennial United States census of population; and

9 (B) Beginning July 1, 1999, and thereafter, any amount in
10 excess of the two percent received during the fiscal year 1999 by
11 a county in which a racetrack other than a racetrack described in
12 paragraph (A) of this proviso is located and where the racetrack
13 has been located in a municipality within the county since on or
14 before January 1, 1999 shall be divided, if applicable, as follows:

15 (i) The county shall receive fifty percent of the excess
16 amount; and

17 (ii) The municipality shall receive fifty percent of the
18 excess amount; and

19 (C) This proviso shall not affect the amount to be received
20 under this subdivision by any other county other than a county
21 described in paragraph (A) or (B) of this proviso;

22 (4) One percent of net terminal income shall be paid for and
23 on behalf of all employees of the licensed racing association by
24 making a deposit into a special fund to be established by the
25 Racing Commission to be used for payment into the pension plan for
26 all employees of the licensed racing association;

27 (5) The West Virginia Thoroughbred Development Fund created
28 under section thirteen-b, article twenty-three, chapter nineteen of

1 this code and the West Virginia Greyhound Breeding Development Fund
2 created under section ten of said article shall receive an equal
3 share of a total of not less than one and one-half percent of the
4 net terminal income;

5 (6) The West Virginia Racing Commission shall receive one
6 percent of the net terminal income which shall be deposited and
7 used as provided in section thirteen-c, article twenty-three,
8 chapter nineteen of this code.

9 (7) A licensee shall receive forty-six and one-half percent of
10 net terminal income.

11 (8) (A) The Tourism Promotion Fund established in section
12 twelve, article two, chapter five-b of this code shall receive
13 three percent of the net terminal income: *Provided*, That for the
14 fiscal year beginning July 1, 2003, the tourism commission shall
15 transfer from the Tourism Promotion Fund \$5 million of the three
16 percent of the net terminal income described in this section and
17 section ten-b of this article into the fund administered by the
18 West Virginia Economic Development Authority pursuant to section
19 seven, article fifteen, chapter thirty-one of this code, \$5 million
20 into the Capitol Renovation and Improvement Fund administered by
21 the Department of Administration pursuant to section six, article
22 four, chapter five-a of this code and \$5 million into the Tax
23 Reduction and Federal Funding Increased Compliance Fund; and

24 (B) Notwithstanding any provision of paragraph (A) of this
25 subdivision to the contrary, for each fiscal year beginning after
26 June 30, 2004, this three percent of net terminal income and the
27 three percent of net terminal income described in paragraph (B),
28 subdivision (8), subsection (a), section ten-b of this article

1 shall be distributed as provided in this paragraph as follows:

2 (i) 1.375 percent of the total amount of net terminal income
3 described in this section and in section ten-b of this article
4 shall be deposited into the Tourism Promotion Fund created under
5 section twelve, article two, chapter five-b of this code;

6 (ii) 0.375 percent of the total amount of net terminal income
7 described in this section and in section ten-b of this article
8 shall be deposited into the Development Office Promotion Fund
9 created under section three-b, article two, chapter five-b of this
10 code;

11 (iii) 0.5 percent of the total amount of net terminal income
12 described in this section and in section ten-b of this article
13 shall be deposited into the Research Challenge Fund created under
14 section ten, article one-b, chapter eighteen-b of this code;

15 (iv) 0.6875 percent of the total amount of net terminal income
16 described in this section and in section ten-b of this article
17 shall be deposited into the Capitol Renovation and Improvement Fund
18 administered by the Department of Administration pursuant to
19 section six, article four, chapter five-a of this code; and

20 (v) 0.0625 percent of the total amount of net terminal income
21 described in this section and in section ten-b of this article
22 shall be deposited into the 2004 Capitol Complex Parking Garage
23 Fund administered by the Department of Administration pursuant to
24 section five-a, article four, chapter five-a of this code;

25 (9) (A) On and after July 1, 2005, seven percent of net
26 terminal income shall be deposited into the Workers' Compensation
27 Debt Reduction Fund created in section five, article two-d, chapter
28 twenty-three of this code: *Provided*, That in any fiscal year when

1 the amount of money generated by this subdivision totals \$11
2 million, all subsequent distributions under this subdivision shall
3 be deposited in the special fund established by the licensee and
4 used for the payment of regular purses in addition to the other
5 amounts provided in article twenty-three, chapter nineteen of this
6 code;

7 (B) The deposit of the seven percent of net terminal income
8 into the Worker's Compensation Debt Reduction Fund pursuant to this
9 subdivision shall expire and not be imposed with respect to these
10 funds and shall be deposited in the special fund established by the
11 licensee and used for payment of regular purses in addition to the
12 other amounts provided in article twenty-three, chapter nineteen of
13 this code, on and after the first day of the month following the
14 month in which the Governor certifies to the Legislature that: (i)
15 The revenue bonds issued pursuant to article two-d, chapter
16 twenty-three of this code, have been retired or payment of the debt
17 service provided for; and (ii) that an independent certified
18 actuary has determined that the unfunded liability of the old fund,
19 as defined in chapter twenty-three of this code, has been paid or
20 provided for in its entirety; and

21 (10) The remaining one percent of net terminal income shall be
22 deposited as follows:

23 (A) For the fiscal year beginning July 1, 2003, the veterans
24 memorial program shall receive one percent of the net terminal
25 income until sufficient moneys have been received to complete the
26 veterans memorial on the grounds of the State Capitol Complex in
27 Charleston, West Virginia. The moneys shall be deposited in the
28 State Treasury in the Division of Culture and History special fund

1 created under section three, article one-i, chapter twenty-nine of
2 this code: *Provided*, That only after sufficient moneys have been
3 deposited in the fund to complete the veterans memorial and to pay
4 in full the annual bonded indebtedness on the veterans memorial,
5 not more than \$20,000 of the one percent of net terminal income
6 provided in this subdivision shall be deposited into a special
7 revenue fund in the State Treasury, to be known as the "John F.
8 'Jack' Bennett Fund". The moneys in this fund shall be expended by
9 the Division of Veterans Affairs to provide for the placement of
10 markers for the graves of veterans in perpetual cemeteries in this
11 state. The Division of Veterans Affairs shall promulgate
12 legislative rules pursuant to the provisions of article three,
13 chapter twenty-nine-a of this code specifying the manner in which
14 the funds are spent, determine the ability of the surviving spouse
15 to pay for the placement of the marker and setting forth the
16 standards to be used to determine the priority in which the
17 veterans grave markers will be placed in the event that there are
18 not sufficient funds to complete the placement of veterans grave
19 markers in any one year, or at all. Upon payment in full of the
20 bonded indebtedness on the veterans memorial, \$100,000 of the one
21 percent of net terminal income provided in this subdivision shall
22 be deposited in the special fund in the Division of Culture and
23 History created under section three, article one-i, chapter
24 twenty-nine of this code and be expended by the Division of Culture
25 and History to establish a West Virginia veterans memorial archives
26 within the Cultural Center to serve as a repository for the
27 documents and records pertaining to the veterans memorial, to
28 restore and maintain the monuments and memorial on the capitol

1 grounds: *Provided, however,* That \$500,000 of the one percent of net
2 terminal income shall be deposited in the State Treasury in a
3 special fund of the Department of Administration, created under
4 section five, article four, chapter five-a of this code, to be used
5 for construction and maintenance of a parking garage on the state
6 Capitol Complex; and the remainder of the one percent of net
7 terminal income shall be deposited in equal amounts in the Capitol
8 Dome and Improvements Fund created under section two, article four,
9 chapter five-a of this code and Cultural Facilities and Capitol
10 Resources Matching Grant Program Fund created under section three,
11 article one of this chapter.

12 (B) For each fiscal year beginning after June 30, 2004:

13 (i) Five hundred thousand dollars of the one percent of net
14 terminal income shall be deposited in the State Treasury in a
15 special fund of the Department of Administration, created under
16 section five, article four, chapter five-a of this code, to be used
17 for construction and maintenance of a parking garage on the State
18 Capitol Complex; and

19 (ii) The remainder of the one percent of net terminal income
20 and all of the one percent of net terminal income described in
21 paragraph (B), subdivision (9), subsection (a), section ten-b of
22 this article shall be distributed as follows: The net terminal
23 income shall be deposited in equal amounts into the Capitol Dome
24 and Capitol Improvements Fund created under section two, article
25 four, chapter five-a of this code and the Cultural Facilities and
26 Capitol Resources Matching Grant Program Fund created under section
27 three, article one, chapter twenty-nine of this code until a total
28 of \$1,500,000 is deposited into the Cultural Facilities and Capitol

1 Resources Matching Grant Program Fund; thereafter, the remainder
2 shall be deposited into the Capitol Dome and Capitol Improvements
3 Fund.

4 (d) Each licensed racetrack shall maintain in its account an
5 amount equal to or greater than the gross terminal income from its
6 operation of video lottery machines, to be electronically
7 transferred by the commission on dates established by the
8 commission. Upon a licensed racetrack's failure to maintain this
9 balance, the commission may disable all of a licensed racetrack's
10 video lottery terminals until full payment of all amounts due is
11 made. Interest shall accrue on any unpaid balance at a rate
12 consistent with the amount charged for state income tax delinquency
13 under chapter eleven of this code. The interest shall begin to
14 accrue on the date payment is due to the commission.

15 (e) The commission's central control computer shall keep
16 accurate records of all income generated by each video lottery
17 terminal. The commission shall prepare and mail to the licensed
18 racetrack a statement reflecting the gross terminal income
19 generated by the licensee's video lottery terminals. Each licensed
20 racetrack shall report to the commission any discrepancies between
21 the commission's statement and each terminal's mechanical and
22 electronic meter readings. The licensed racetrack is solely
23 responsible for resolving income discrepancies between actual money
24 collected and the amount shown on the accounting meters or on the
25 commission's billing statement.

26 (f) Until an accounting discrepancy is resolved in favor of
27 the licensed racetrack, the commission may make no credit
28 adjustments. For any video lottery terminal reflecting a

1 discrepancy, the licensed racetrack shall submit to the commission
2 the maintenance log which includes current mechanical meter
3 readings and the audit ticket which contains electronic meter
4 readings generated by the terminal's software. If the meter
5 readings and the commission's records cannot be reconciled, final
6 disposition of the matter shall be determined by the commission.
7 Any accounting discrepancies which cannot be otherwise resolved
8 shall be resolved in favor of the commission.

9 (g) Licensed racetracks shall remit payment by mail if the
10 electronic transfer of funds is not operational or the commission
11 notifies licensed racetracks that remittance by this method is
12 required. The licensed racetracks shall report an amount equal to
13 the total amount of cash inserted into each video lottery terminal
14 operated by a licensee, minus the total value of game credits which
15 are cleared from the video lottery terminal in exchange for winning
16 redemption tickets, and remit the amount as generated from its
17 terminals during the reporting period. The remittance shall be
18 sealed in a properly addressed and stamped envelope and deposited
19 in the United States mail no later than noon on the day when the
20 payment would otherwise be completed through electronic funds
21 transfer.

22 (h) Licensed racetracks may, upon request, receive additional
23 reports of play transactions for their respective video lottery
24 terminals and other marketing information not considered
25 confidential by the commission. The commission may charge a
26 reasonable fee for the cost of producing and mailing any report
27 other than the billing statements.

28 (i) The commission has the right to examine all accounts, bank

1 accounts, financial statements and records in a licensed
2 racetrack's possession, under its control or in which it has an
3 interest and the licensed racetrack shall authorize all third
4 parties in possession or in control of the accounts or records to
5 allow examination of any of those accounts or records by the
6 commission.

7 **§29-22A-10c. Surcharge; Capital Reinvestment Fund.**

8 (a) For all fiscal years beginning on or after July 1, 2001,
9 there shall be imposed a surcharge of ten percent against the
10 excess of total net terminal income generated from a licensed
11 racetrack for that fiscal year over total net terminal income from
12 that licensed racetrack for the fiscal year ending June 30, 2001.

13 (b) A Capital Reinvestment Fund is hereby created within the
14 Lottery Fund. Forty-two percent of the surcharge amount
15 attributable to each racetrack shall be retained by the commission
16 and deposited into a separate Capital Reinvestment Account for that
17 licensed racetrack. For each dollar expended by a licensed
18 racetrack for capital improvements at the racetrack, at the
19 location of any amenity associated with the licensed racetrack's
20 destination resort facility operations, or at adjacent facilities
21 owned by the licensee, having a useful life of three or more years
22 and placed in service after April 1, 2001, the licensed racetrack
23 shall receive \$1 in recoupment from its Capital Reinvestment Fund
24 Account: *Provided*, That in the case of thoroughbred horse tracks,
25 four cents of every dollar in recoupment shall be reserved into a
26 separate account, which shall only be spent on capital improvements
27 and upgrading to facilities used for the housing and care of
28 horses, facilities located inside the perimeter of the racing

1 surface, including the surface thereof, facilities used for housing
2 persons responsible for the care of horses, and that any such
3 capital improvements and upgrading shall be subject to recoupment
4 under this section only if they have been approved by the
5 Horsemen's Benevolent and Protective Association acting on behalf
6 of the horsemen: *Provided, however,* That in the case of greyhound
7 race tracks, four cents of every dollar in recoupment shall be
8 spent on capital improvements and upgrading in the kennel area or
9 other areas at the track. If a licensed racetrack's unrecouped
10 capital improvements exceed its capital reinvestment fund account
11 at the end of any fiscal year, the excess improvements may be
12 carried forward to fifteen subsequent fiscal years.

13 (c) Fifty-eight percent of the surcharge amount plus any
14 moneys remaining in a racetrack's Capital Reinvestment Fund Account
15 at the end of any fiscal year shall be deposited in the State
16 Excess Lottery Revenue Fund created in section eighteen-a, article
17 twenty-two of this chapter.

18 **ARTICLE 25. AUTHORIZED GAMING FACILITY.**

19 **§29-25-19. Consent to presence of law-enforcement officers;**
20 **wagering limits; operations and services; posting**
21 **of betting limits.**

22 (a) *Consent to presence of law-enforcement officers.* -- Any
23 individual entering the gaming facility shall be advised by the
24 posting of a notice or other suitable means of the possible
25 presence of state, county or municipal law-enforcement officers and
26 by entering the gaming facility impliedly consents to the presence
27 of the law-enforcement officers.

28 (b) *Commission discretion in gaming operations.* -- Video

1 lottery terminals operated at the gaming facility may allow minimum
2 and maximum wagers on a single game the amounts determined by the
3 license in the exercise of its business judgment subject to the
4 approval of the commission.

5 (1) Subject to the approval of the commission, the gaming
6 facility licensee shall, with respect to West Virginia Lottery
7 table games, establish the following:

8 (A) Maximum and minimum wagers;

9 (B) Advertising and promotional activities;

10 (C) Hours of operation;

11 (D) The days during which games may be played; and

12 (2) The commission may consider multiple factors, including,
13 but not limited to, industry standards, outside competition and any
14 other factors as determined by the commission to be relevant in its
15 decision to approve the gaming facility's determination of those
16 items listed in subdivision (1) of this subsection.

17 (c) *Setting of operations.* -- Notwithstanding anything to the
18 contrary contained elsewhere in this chapter, the commission may
19 establish the following parameters for commission regulated lottery
20 games of any kind which is played at a licensed gaming facility:

21 (1) Minimum and maximum payout percentages;

22 (2) Any probability limits of obtaining the maximum payout for
23 a particular play; and

24 (3) Limitations on the types and amounts of financial
25 transactions, including extension of credit to a patron, which a
26 gaming facility can enter into with its patrons.

27 (d) *Posting of betting limits.* -- A gaming facility shall
28 conspicuously post a sign at each West Virginia Lottery table game

1 indicating the permissible minimum and maximum wagers pertaining at
2 that table. A gaming facility licensee may not require any wager
3 to be greater than the stated minimum or less than the stated
4 maximum. However, any wager actually made by a patron and not
5 rejected by a gaming facility licensee prior to the commencement of
6 play shall be treated as a valid wager.

7 **§29-25-22. Historic Resort Hotel Fund; allocation of adjusted**
8 **gross receipts; disposition of license fees.**

9 (a) There is hereby created a special fund in the State
10 Treasury which shall be designated and known as the Historic Resort
11 Hotel Fund. Thirty-six percent of the gross terminal income
12 received by the commission under section twenty of this article and
13 thirty percent of the adjusted gross receipts received by the
14 commission under section twenty-one of this article shall be
15 deposited with the State Treasurer and placed in the Historic
16 Resort Hotel Fund. The fund shall be an interest-bearing account
17 with interest to be credited to and deposited in the Historic
18 Resort Hotel Fund.

19 (b) All expenses of the commission shall be paid from the
20 Historic Resort Hotel Fund, including reimbursement of the State
21 Police for activities performed at the request of the commission in
22 connection with background investigations or enforcement activities
23 pursuant to this article. At no time may the commission's expenses
24 under this article exceed fifteen percent of the total of the
25 annual revenue received from the licensee under this article,
26 including all license fees, taxes or other amounts required to be
27 deposited in the Historic Resort Hotel Fund.

28 (c) An Historic Resort Hotel Modernization Fund is hereby

1 created within the Historic Resort Hotel Fund. For all fiscal
2 years beginning on or after July 1, 2011, the commission shall
3 deduct two and one-half percent from gross terminal income received
4 by the commission under section twenty of this article for the
5 fiscal year and deposit these amounts into a separate facility
6 modernization account maintained within the Historic Resort Hotel
7 Modernization Fund for each historic resort hotel. For each dollar
8 expended by a historic resort hotel for video lottery or table
9 gaming facility modernization improvements at the historic resort
10 hotel, having a useful life of three or more years and placed in
11 service after April 1, 2011, the historic resort hotel shall
12 receive \$1 in recoupment from its facility modernization account.
13 For purposes of this section, the term "video lottery or table
14 gaming facility modernization improvements" include acquisition of
15 computer hardware and software, communications and Internet access
16 equipment, security and surveillance equipment, video lottery
17 terminals and other electronic equipment or other equipment
18 designed to modernize the facility.

19 (d) The balance of the Historic Resort Hotel Fund shall become
20 net income and shall be divided as follows:

21 (1) Sixty-four percent of the Historic Resort Hotel Fund net
22 income shall be paid into the General Revenue Fund to be
23 appropriated by the Legislature;

24 (2) Nineteen percent of the Historic Resort Hotel Fund net
25 income shall be paid into the State Debt Reduction Fund established
26 in section twenty-seven, article twenty-two-c of this chapter to be
27 appropriated by the Legislature;

28 (3) The Tourism Promotion Fund established in section twelve,

1 article two, chapter five-b of this code shall receive three
2 percent of the Historic Resort Hotel Fund net income;

3 (4) The county where the gaming facility is located shall
4 receive four percent of the Historic Resort Hotel Fund net income;

5 (5) The municipality where the gaming facility is located or
6 the municipality closest to the gaming facility by paved road
7 access as of the effective date of the reenactment of this section
8 by the 2009 regular session of the Legislature shall receive two
9 and one-half percent of the Historic Resort Hotel Fund net income;

10 (6) The municipalities within the county where the gaming
11 facility is located, except for the municipality receiving funds
12 under subdivision (5) of this subsection, shall receive equal
13 shares of two and one-half percent of the Historic Resort Hotel
14 Fund net income;

15 (7) Each county commission in the state that is not eligible
16 to receive a distribution under subdivision (4) of this subsection
17 shall receive equal shares of two and one-half percent of the
18 Historic Resort Hotel Fund net income: *Provided*, That funds
19 transferred to the county commission under this subdivision shall
20 be used only to pay regional jail expenses and the costs of
21 infrastructure improvements and other capital improvements; and

22 (8) The governing body of each municipality in the state that
23 is not eligible to receive a distribution under subdivisions (5)
24 and (6) of this subsection shall receive equal shares of two and
25 one-half percent of the Historic Resort Hotel Fund net income:
26 *Provided*, That funds transferred to municipalities under this
27 subdivision shall be used only to pay for debt reduction in
28 municipal police and fire pension funds and the costs of

1 infrastructure improvements and other capital improvements.

2 (e) Notwithstanding any provision of this article to the
3 contrary, all limited gaming facility license fees and license
4 renewal fees received by the commission pursuant to section nine of
5 this article shall be deposited into the Community-Based Service
6 Fund created in section twenty-seven, article twenty-two-c of this
7 chapter.

8 (f) With the exception of the license fees and license renewal
9 fees received by the commission pursuant to section nine of this
10 article, all revenues received from licensees and license
11 applicants under this article shall be retained by the commission
12 as reimbursement for the licensing process.